

The definition of “armed forces” in former section 2281(4) is omitted as unnecessary in view of the definition of “armed forces” in section 2101.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Subchapter II of chapter 7 of title 42, referred to in par. (2), is classified to section 401 et seq. of Title 42, The Public Health and Welfare.

Sections 228b, 228c(e), 228c-1, and 228e of title 45, referred to in par. (2), are references to sections 2, 3(e), 4, and 5 of the Railroad Retirement Act of 1937. That Act was amended in its entirety and completely revised by Pub. L. 93-445, Oct. 16, 1974, 88 Stat. 1305. The Act, as thus amended and revised, was redesignated the Railroad Retirement Act of 1974, and is classified to subchapter IV (section 231 et seq.) of chapter 9 of Title 45, Railroads.

Section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), referred to in text, is covered by section 1438 of Title 10, Armed Forces.

AMENDMENTS

1991—Pars. (2)(A), (3)(A). Pub. L. 102-54 substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

§ 8312. Conviction of certain offenses

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311(2) and (3) of this title, if the individual—

(1) was convicted, before, on, or after September 1, 1954, of an offense named by subsection (b) of this section, to the extent provided by that subsection; or

(2) was convicted, before, on, or after September 26, 1961, of an offense named by subsection (c) of this section, to the extent provided by that subsection.

The prohibition on payment of annuity or retired pay applies—

(A) with respect to the offenses named by subsection (b) of this section, to the period after the date of the conviction or after September 1, 1954, whichever is later; and

(B) with respect to the offenses named by subsection (c) of this section, to the period after the date of conviction or after September 26, 1961, whichever is later.

(b) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 1, 1954:

(1) An offense within the purview of—

(A) section 792 (harboring or concealing persons), 793 (gathering, transmitting, or losing defense information), 794 (gathering or delivering defense information to aid foreign government), or 798 (disclosure of classified information), of chapter 37 (relating to espionage and censorship) of title 18;

(B) chapter 105 (relating to sabotage) of title 18;

(C) section 2381 (treason), 2382 (misprision of treason), 2383 (rebellion or insurrection), 2384 (seditious conspiracy), 2385 (advocating overthrow of government), 2387 (activities

affecting armed forces generally), 2388 (activities affecting armed forces during war), 2389 (recruiting for service against United States), or 2390 (enlistment to serve against United States), of chapter 115 (relating to treason, sedition, and subversive activities) of title 18;

(D) section 10(b)(2), (3), or (4) of the Atomic Energy Act of 1946 (60 Stat. 766, 767), as in effect August 30, 1954;

(E) section 16(a) or (b) of the Atomic Energy Act of 1946 (60 Stat. 773), as in effect before August 30, 1954, insofar as the offense is committed with intent to injure the United States or with intent to secure an advantage to a foreign nation; or

(F) an earlier statute on which a statute named by subparagraph (A), (B), or (C) of this paragraph (1) is based.

(2) An offense within the purview of—

(A) article 104 (aiding the enemy), article 106 (spies), or article 106a (espionage) of the Uniform Code of Military Justice (chapter 47 of title 10) or an earlier article on which article 104 or article 106, as the case may be, is based; or

(B) a current article of the Uniform Code of Military Justice (or an earlier article on which the current article is based) not named by subparagraph (A) of this paragraph (2) on the basis of charges and specifications describing a violation of a statute named by paragraph (1), (3), or (4) of this subsection, if the executed sentence includes death, dishonorable discharge, or dismissal from the service, or if the defendant dies before execution of that sentence as finally approved.

(3) Perjury committed under the statutes of the United States or the District of Columbia—

(A) in falsely denying the commission of an act which constitutes an offense within the purview of—

(i) a statute named by paragraph (1) of this subsection; or

(ii) an article or statute named by paragraph (2) of this subsection insofar as the offense is within the purview of an article or statute named by paragraph (1) or (2) (A) of this subsection;

(B) in falsely testifying before a Federal grand jury, court of the United States, or court-martial with respect to his service as an employee in connection with a matter involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States; or

(C) in falsely testifying before a congressional committee in connection with a matter under inquiry before the congressional committee involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States.

(4) Subornation of perjury committed in connection with the false denial or false testi-

mony of another individual as specified by paragraph (3) of this subsection.

(c) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 26, 1961:

(1) An offense within the purview of—

(A) section 2272 (violation of specific sections) or 2273 (violation of sections generally of chapter 23 of title 42) of title 42 insofar as the offense is committed with intent to injure the United States or with intent to secure an advantage to a foreign nation;

(B) section 2274 (communication of restricted data), 2275 (receipt of restricted data), or 2276 (tampering with restricted data) of title 42; or

(C) section 783 (conspiracy and communication or receipt of classified information) of title 50 or section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to intelligence identities).

(2) An offense within the purview of a current article of the Uniform Code of Military Justice (chapter 47 of title 10) or an earlier article on which the current article is based, as the case may be, on the basis of charges and specifications describing a violation of a statute named by paragraph (1), (3), or (4) of this subsection, if the executed sentence includes death, dishonorable discharge, or dismissal from the service, or if the defendant dies before execution of that sentence as finally approved.

(3) Perjury committed under the statutes of the United States or the District of Columbia in falsely denying the commission of an act which constitutes an offense within the purview of a statute named by paragraph (1) of this subsection.

(4) Subornation of perjury committed in connection with the false denial of another individual as specified by paragraph (3) of this subsection.

(d)(1) For purposes of subsections (b)(1) and (c)(1), an offense within the meaning of such subsections is established if the Attorney General of the United States certifies to the agency administering the annuity or retired pay concerned—

(A) that an individual subject to this chapter has been convicted by an impartial court of appropriate jurisdiction within a foreign country in circumstances in which the conduct violates the provisions of law enumerated in subsections (b)(1) and (c)(1), or would violate such provisions had such conduct taken place within the United States, and that such conviction is not being appealed or that final action has been taken on such appeal;

(B) that such conviction was obtained in accordance with procedures that provided the defendant due process rights comparable to such rights provided by the United States Constitution, and such conviction was based upon evidence which would have been admissible in the courts of the United States; and

(C) that such conviction occurred after the date of enactment of this subsection.

(2) Any certification made pursuant to this subsection shall be subject to review by the

United States Court of Claims based upon the application of the individual concerned, or his or her attorney, alleging that any of the conditions set forth in subparagraphs¹ (A), (B), or (C) of paragraph (1), as certified by the Attorney General, have not been satisfied in his or her particular circumstances. Should the court determine that any of these conditions has not been satisfied in such case, the court shall order any annuity or retirement benefit to which the person concerned is entitled to be restored and shall order that any payments which may have been previously denied or withheld to be paid by the department or agency concerned.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 559; Pub. L. 92-128, §2(b), Sept. 25, 1971, 85 Stat. 348; Pub. L. 99-569, title VI, §603, Oct. 27, 1986, 100 Stat. 3204; Pub. L. 103-337, div. A, title VI, §639(a), Oct. 5, 1994, 108 Stat. 2791; Pub. L. 103-359, title VIII, §805, Oct. 14, 1994, 108 Stat. 3441.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2282.	Sept. 26, 1961, Pub. L. 87-299, §1 "Sec. 1", 75 Stat. 640.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Pars. (2), (3) and (4) of subsec. (b) of section 10 of the Atomic Energy Act of 1946 (60 Stat. 766, 767), as in effect before August 30, 1954, referred to in subsec. (b)(1)(D), are covered by sections 2274, 2275 and 2276, respectively, of Title 42, The Public Health and Welfare.

Subsecs. (a) and (b) of section 16 of the Atomic Energy Act of 1946 (60 Stat. 773), as in effect before August 30, 1954, referred to in subsec. (b)(1)(E), are covered by sections 2272 and 2273, respectively, of Title 42.

Articles 104, 106, and 106a of the Uniform Code of Military Justice, referred to in subsec. (b)(2)(A), are sections 904, 906, and 906a, respectively, of Title 10, Armed Forces. The Uniform Code of Military Justice, in its entirety, is set out in section 801 et seq. of Title 10.

The date of enactment of this subsection, referred to in subsec. (d)(1)(C), is the date of enactment of Pub. L. 103-359, which was approved Oct. 14, 1994.

AMENDMENTS

1994—Subsec. (b)(2)(A). Pub. L. 103-337 substituted “, article 106 (spies), or article 106a (espionage)” for “or article 106 (spies)”.

Subsec. (d). Pub. L. 103-359 added subsec. (d).

1986—Subsec. (c)(1)(C). Pub. L. 99-569 inserted provisions relating to section 601 of the National Security Act of 1947.

1971—Subsec. (c)(1)(C). Pub. L. 92-128 struck out “, 822 (conspiracy or evasion of apprehension during internal security emergency), or 823 (aiding evasion or apprehension during internal security emergency)” after “classified information”.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 639(b) of Pub. L. 103-337 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 5, 1994] and shall apply to persons convicted of espionage under section 906a of title 10, United States Code (article 106a of the Uniform Code of Military Justice), on or after the date of the enactment of this Act.”

¹ So in original. Probably should be “subparagraph”.